

DATE: October 9, 2007

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 07-02779

**DECISION OF ADMINISTRATIVE JUDGE
NOREEN A. LYNCH**

APPEARANCES

FOR GOVERNMENT

Daniel F. Crowley Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 31-year-old employee of a defense contractor who has a history of illegal drug use as recent as July 2006, and a March 2002 charge for possession of marijuana to which she pled guilty and was fined \$500. She failed to mitigate the security concerns raised under drug involvement guidelines. She did not intentionally falsify her security clearance application. Thus, she has mitigated the security concern under the personal conduct guidelines. Applicant's eligibility for a security clearance is denied.

STATEMENT OF THE CASE

On October 3, 2006, Applicant applied for a security clearance and submitted a Security Clearance Application (SF 86). On July 10, 2007, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) stating that it was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance.¹ The SOR, which is in essence the administrative complaint, alleged security concerns under Guideline H (Drug Involvement) and Guideline E (Personal Conduct) of the revised Adjudicative Guidelines (AG) issued on December 29, 2005, and implemented by the Department of Defense effective September 1, 2006. The revised guidelines were provided to Applicant when the SOR was issued.

On August 2, 2007, Applicant submitted a notarized response to the SOR, and elected to have a hearing before an administrative judge. The case was assigned to me on August 29, 2007. A notice of hearing, dated September 4, 2007, scheduled the case by video-teleconference.² I scheduled the hearing for September 18, 2007.

The hearing was convened as scheduled on September 18, 2007, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Government Exhibits (GE 1-2) were admitted without objection. Applicant's exhibit (AE A) was also admitted into the record without objection. Applicant testified in her own behalf. The hearing transcript was received on September 24, 2007.

FINDINGS OF FACT

Applicant admitted to all allegations in the SOR under Guideline H and Guideline E.³ The admissions are incorporated as findings of fact. After a complete review of the evidence in the record and upon due consideration, I make the following additional findings of fact:

Applicant is a 31-year-old employee of a defense contractor.⁴ After graduating from high school in 1994, she worked in various positions. Applicant attended college courses part time from 1999 to 2000, with the goal of obtaining a liberal art's degree. She has worked for her current employer since 1999. Applicant is married with no children.⁵ She completed her first security clearance application (SF 86) on October 3, 2006.⁶

¹This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).

²A Notice of Hearing dated September 4, 2007 was mailed to Applicant. She waived the 15-day period for notice.

³Applicant's Answer to SOR, dated July 25, 2007.

⁴GE 1 (Application for Security Clearance (SF 86), dated October 3, 2006).

⁵Tr. at 28.

⁶*Id.*

While in high school, Applicant did not experiment or use any drugs. However, starting in 1996, Applicant experimented with marijuana in social settings. She acknowledged that she wanted to “fit in.” She reported her use of marijuana was dependent on what was going on in her life. She approximated her use at 2-4 times per month. Her husband purchased the marijuana for their use spending \$25 to \$50 per month. She preferred marijuana to alcohol because it did not give her a hangover and it made her feel “happy go lucky.”⁷ Her husband still smokes marijuana at home.⁸

On March 2, 2002, Applicant was arrested for possession of marijuana.⁹ She, her husband and a friend went to a bar for the evening. On their way home they went through a routine road block. A police officer pulled them over and after smelling marijuana, found a small amount under the passenger seat in a mint tin. Applicant was driving the vehicle. No one in the car admitted to ownership of the marijuana. Applicant was fined for possession of a controlled substance in a moving vehicle. She pled guilty and was fined \$500.¹⁰

When Applicant completed a security clearance application in October 2006, she answered “no” to Section 24: Your Use of Illegal Drugs. She acknowledged that she completed the security application while on the job and was rushed. In fact, she emphasized that she would have to put it away and continue it when she had to attend to the assembly line. She was adamant that it was an oversight on her part that she did not check the “yes” block to the question. She completed the application on a computer at work and did not see the completed version. Since she did not have a computer at home, she had to complete the entire application at work. However, she disclosed the 2002 marijuana possession charge in Section 23. She reported the marijuana usage to the DSS investigator when interviewed in 2006. She stated that she was ashamed of her marijuana use. Applicant admitted that she used the marijuana from 1996 until 2006, but denied the underlying allegation of falsification. She maintained that it was an oversight and that she did not wish to hide anything.¹¹

Applicant indicated she stopped using marijuana in July 2006, but could not remember the exact date. She stopped using the drug because she wants to keep her job. She likes her work and wants to advance in the company with her friends. She realizes that she does not have to have drugs to have friends. She is willing to be tested for drugs.¹²

Applicant declares she will never use marijuana again. She understands the ramifications for her future. She knows using drugs is illegal. She stated her decision to use marijuana was a mistake. At the hearing, she acknowledged that her husband still smokes marijuana. However, she testified

⁷Tr.44.

⁸This information is not considered for disqualifying purposes, but is considered when analyzing the “whole person,” and the potential application of mitigating conditions.

⁹GE 2 (Answer to Interrogatories, dated May 29, 2007).

¹⁰Tr.33.

¹¹Tr.17.

¹²Tr. 38-39.

he does not do so in her presence. She also stated that she does not attend any social gatherings with people who smoke marijuana.¹³

Applicant enjoys her current position, and is very committed to its success.¹⁴ She wants to advance in her work. She also wants to continue to work with the same team at her company for the foreseeable future. However, they are now working in a secure environment and she cannot join her co-workers because she does not have a clearance. She used marijuana during the nine years that she has been employed with her company.

Her prior team leader/ supervisor describes Applicant as an excellent employee. She is a hardworking, team player who has demonstrated tremendous work ethic, dedication, and reliability. She is a self-motivated and self-directed worker. She requires little supervision. Applicant is one of the team's top performers. He recommends her for a security clearance.¹⁵

POLICIES

The President has “the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information.”¹⁶ In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information and determining trustworthiness within the executive branch.

To be eligible for a security clearance or access to sensitive information, an applicant must meet the security guidelines contained in the Directive. The revised Adjudicative Guidelines set forth potentially disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. Additionally, each security decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the adjudicative process factors listed in ¶ 6.3 of the Directive, and AG ¶ 2(a).

“The adjudicative process is an examination of a sufficient period of a person’s life to make an affirmative determination that the person is eligible for a security clearance.”¹⁷ An administrative judge must apply the “whole person concept,” and consider and carefully weigh the available, reliable information about the person.¹⁸ An administrative judge should consider the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the

¹³Tr.43.

¹⁴AE A (Letter from Applicant’s team leader, dated September 2007).

¹⁵*Id.*

¹⁶ *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).

¹⁷ Directive, ¶ E2.2.1.

¹⁸ Directive, Revised Adjudicative Guidelines (AG) ¶ 2 (a)(1)-(9).

individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.¹⁹

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information.²⁰ Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts.²¹ An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."²² Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.²³

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. The government has established a *prima facie* case for disqualification under Guideline H of the revised Adjudicative Guidelines (AG) most pertinent to the evaluation of the facts in this case.

Guideline H (Drug Involvement) The Concern: *Use of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability and trustworthiness, both because it may impair judgement and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations.*²⁴

In this matter, the government provided substantial evidence that Applicant used marijuana for a period of more than ten years on a social basis from 1996 until July 2006. Applicant also admitted using marijuana. She was charged with possession of a controlled substance in March 2002 and pled guilty. Consequently, Drug Involvement Disqualifying Condition (DI DC) AG ¶ 25(a) (*any drug use*), and DI DC AG ¶ 25(c) (*illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia*) apply.

With the government's case initially established, the burden shifts to Applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against her. I considered the Drug Involvement Consideration Mitigating Condition (DI MC) AG ¶ 26 (a) (*the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment*).

¹⁹ *Id.*

²⁰ Directive, ¶ E3.1.14.

²¹ Directive, ¶ E3.1.15.

²² ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 2002).

²³ Directive, ¶ E2.2.2.

²⁴ AG ¶ 24.

However, it does not apply because she was smoking marijuana until July 2006 just before she completed her security clearance application. After the 2002 incident and while working for her employer, she continued to use marijuana.

Applicant provided insufficient evidence or explanation to support the DI MC AG ¶ 26 (b) (*a demonstrated intent not to abuse drugs in the future, such as: (1) disassociation from drug-using associates and contacts; (2) changing or avoiding the environment where drugs were used; (3) an appropriate period of abstinence; (4) a signed statement of intent with automatic revocation of clearance for any violation*). Applicant stated that she values her job and wants to stay with her coworkers. She promises not to use marijuana in the future, and offered to take a drug test. I find insufficient proof of a demonstrated intent.

Applicant apologizes for her mistakes, and states she will not be influenced by peer pressure. However, Applicant has not mitigated the drug involvement security concern due to the short period of abstinence after a ten-year period of using marijuana. It is premature to grant a clearance at this time. Allegations 1.a and 1.b are decided against Applicant.

Guideline E (Personal Conduct) The Concern: *Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.*

On October 3, 2006, Applicant, in response, to Section 24: Your Use of Drugs answered “no.” Under DC PC 16(a), the government established that Applicant omitted a material fact from answer to Section 24. She denies that she deliberately falsified her answer to this section. When a falsification allegation is controverted, the government has the burden of proving it. Proof of an admission, standing alone, does not establish or prove an Applicant's intent or state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence regarding an Applicant's intent or state of mind at the time the omission occurred.²⁵ For DC PC ¶ 16(a) (*deliberate omission, concealment, or falsification of relevant and material facts from an personnel security questionnaire*) . . .to apply, the government must establish that Applicant's omission, concealment or falsification in her answer was deliberate. I do not find that this was a deliberate falsification for the reasons discussed above. Applicant was sincere and candid at her hearing. She was a credible witness. I find in favor of Applicant for personal conduct under allegation 2.a.

Whole Person

In all adjudications, the protection of our national security is the paramount concern. The objective of the trustworthy determination process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for assignment to sensitive duties. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the “whole person” concept. It recognizes that we should view a person by the totality of

²⁵See ISCR Case NO. 03-09483 at 4 (App. Bd. Nov. 17, 2004)(explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004).

their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

Applicant was sincere in her demeanor and testimony at the hearing. She acknowledges that she made mistakes and wants to correct them. She used marijuana to fit in socially and now believes that is not necessary. However she stopped using marijuana just before her security application because she wants to keep her position and move with her friend to a new project. She used poor judgment as recent as 2006, despite her conviction and fine of \$500 for marijuana possession in 2002. She admits that her husband still uses marijuana. I do not find sufficient time has elapsed since Applicant's last marijuana use. Applicant has not carried her burden in this case. There is not a sufficient period of abstinence from possession and use of marijuana. Even Applicants with an exemplary work record may be denied a security clearance because her work performance is not the issue in a security clearance case.

I have considered all the evidence and the "whole person" in evaluating Applicant's security clearance determination. Applicant's long term and still quite recent lapse in judgment with drugs leaves doubt as to her reliability. I have considered her desire to put this behind her, but I conclude it is premature to find in favor of Applicant. Despite her good characteristics, she has not met the burden to overcome the security concern. It is not clearly consistent with the interests of national security to grant a security clearance for Applicant. Clearance is denied.

FORMAL FINDINGS

Formal Findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

| | |
|---------------------------|-------------------|
| Paragraph 1. Guideline H: | AGAINST APPLICANT |
| Subparagraph 1.a-1.b: | Against Applicant |
| Paragraph 2. Guideline E: | FOR APPLICANT |
| Subparagraph 2.a. | For Applicant |

DECISION

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national interest to grant Applicant's request for a security clearance. Clearance is denied.

Noreen A. Lynch
Administrative Judge